

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

**ILLINOIS COMMERCE COMMISSION
ON ITS OWN MOTION,**

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Docket No. 01-0539

**IMPLEMENTATION OF SECTION 13-712(g)
OF THE PUBLIC UTILITIES ACT.**

INITIAL BRIEF OF THE WIRELESS COALITION

September 25, 2002

John W. McCaffrey
Kathleen R. Pasulka-Brown
Foley & Lardner
Three First National Plaza
70 West Madison Street
Suite 4200
Chicago, Illinois 60602
(312) 558-6600

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The Wireless Coalition, comprised of PrimeCo Personal Communications, U.S. Cellular and VoiceStream (n/k/a T-Mobile), through its counsel, hereby submits the Initial Brief of the Wireless Coalition in the Illinois Commerce Commission's ("Commission") proceeding to implement Section 13-712(g) of the Illinois Public Utilities Act ("Act"), 220 ILCS 5/1-101 et seq.

I. INTRODUCTION

Wholesale special access services provide high speed connections between critical facilities in wireless telecommunications networks. To consistently provide high quality wireless telecommunications services to Illinois consumers, Wireless Coalition members need reliable, high quality wholesale special access services.

To date, the wholesale special access services provided by incumbent local exchange carriers in Illinois has been poor and unreliable. Wholesale special access circuits frequently fail and service on failed circuits is not promptly restored. When wholesale special access circuits fail, connections that are critical to the provision of wireless telecommunications are terminated, which causes Illinois consumers of such services to experience significant problems with their service. It also causes Wireless Coalition members to incur significant monetary losses. Thus, poor quality wholesale

special access services adversely impact Illinois consumers and impair Wireless Coalition members' ability to compete in Illinois' telecommunications market.

The Illinois legislature recently has taken steps to address the well-publicized problems that adversely impact the development and deployment of telecommunications services in Illinois. It has authorized and directed the Commission to do the same, and it is critical that the Commission accomplish this task. The Commission can do so by, among other things, requiring Illinois providers of wholesale special access services to improve the quality of, and consistently provide reliable, wholesale special access services to their competitors – or pay the price for failing to do so. More particularly, pursuant to the legislative directive in Section 13-712(g) of the Act, the Commission should order such providers to satisfy meaningful wholesale special access performance measures and standards and should establish remedies that will incent them to improve performance that falls short. Establishing and implementing such measures will facilitate and promote competition in Illinois' telecommunications market and redound to the benefit of all Illinois telecommunications consumers.

II. FACTUAL BACKGROUND

A. THE LEGISLATURE DIRECTED THE COMMISSION TO ESTABLISH AND IMPLEMENT CARRIER TO CARRIER WHOLESAL SERVICE QUALITY RULES

In mid-2001, the legislature significantly amended the Telecommunications Article of the Act ("Article 13"). See 220 ILCS 5/13-100 et seq. Newly added Section 13-712(g) of Article 13 states: "The Commission shall establish and implement carrier to carrier wholesale service quality rules and establish remedies to ensure enforcement of the rules." 220 ILCS 5/13-712(g).

Pursuant to the directive in Section 13-712(g), the Staff of the Commission (“Staff”) conducted industry workshops to facilitate development of the wholesale service quality rules and remedies to be established and implemented by the Commission. At the conclusion of the workshop process, Staff filed a proposed rule, ICC Staff Ex. 1.1, which Staff subsequently amended and refiled as ICC Staff Ex. 7.1 (“Staff’s Proposed Rule”).

Based on the Wireless Coalition members’ negative experiences with wholesale special access services provided by Illinois’ local exchange carriers (“LECs”), the Wireless Coalition is recommending that the Commission adopt as its Part 731 rule a modified version of Staff’s Proposed Rule. Unlike Staff’s Proposed Rule, the Wireless Coalition’s proposed rule includes specific wholesale special access performance measures, standards and remedies for incumbent LECs. For the convenience of the Commission, a red-lined version and a clean copy of the Wireless Coalition’s proposed rule are attached hereto as Exhibits A and B, respectively. As explained in Section C(3) of this Brief, the Wireless Coalition also has prepared an alternative proposed rule, which is a simplified version of Exhibit A. A copy of the alternative proposed rule is attached as Exhibit C.

B. THE POOR QUALITY WHOLESAL SPECIAL ACCESS
SERVICES PROVIDED BY INCUMBENT LOCAL EXCHANGE
CARRIERS ADVERSELY IMPACTS THE WIRELESS
COALITION MEMBERS’ ABILITY TO COMPETE IN ILLINOIS’
TELECOMMUNICATIONS MARKET

Each member of the Wireless Coalition is certified to provide and is and has been providing wireless telecommunications services throughout Illinois for some time. (Wireless Coalition Ex. 1.0 at 3:48-50 and Ex. 2.0 at 2:52-56, 3:51 and Ex. 5.0 at 4:55-63.) The networks over which these carriers provide such services are comprised of multiple base transceiver stations, i.e., cell sites, that are connected to the carriers’

switches by wholesale special access circuits and other facilities. (Wireless Coalition Ex. 1.0 at 3:53-57 and Ex. 2.0 at 3:57-59 and 63-64, 3:63-4:68, 6:110-111 and Ex. 3.0 at 4:68-71 and Ex. 5.0 at 4:64-5:67.) To process wireless telephone calls, the telephone signals received at these carriers' cell sites must be transported to the carriers' switches for routing to their termination points. (Wireless Coalition Ex. 2.0 at 3:62-4:68 and Ex. 3.0 at 4:71-74.) The Wireless Coalition members utilize – and are dependent on – wholesale special access services provided by incumbent LECs to accomplish the necessary high-speed transport of telephone signals between cell sites and switches. (Wireless Coalition Ex. 1.0 at 3:53-57 and Ex. 2.0 at 3:57-59 and 63-64, 3:63-4:68, 6:110-111 and Ex. 5.0 at 4:64-5:67 and Ex. 7.0 at 6:94-99; Testimony of Lester Tsuyuki (“Tsuyuki”), 8/13/02 Transcript (“Tr.”) 813:20-815:8.)

All aspects of the wholesale special access services incumbent LECs have been providing Wireless Coalition members have been and continue to be poor and unreliable. (Wireless Coalition Ex. 1.0 at 4:74-75 and Ex. 2.0 at 2:35-36 and Ex. 3.0 at 3:64-4:74 and Ex. 5.0 at 4:49-51 and Ex. 6.0 at 5:76-77 and Ex. 7.0 at 5:83.) Ordering processes are unclear and subject to unreasonable delay when Wireless Coalition members are provided with inconsistent information regarding ordering procedures. (Wireless Coalition Ex. 1.0 at 4:85-87.) Also, electronic ordering processes are not always in service. (Wireless Coalition Ex. 5.0 at 7:121-23.)

Provisioning is problematic because incumbent LECs do not timely complete necessary engineering, frequently fail to timely provide Wireless Coalition members with notice of the dates on which wholesale special access circuits will be installed and fail to timely install circuits once installations dates have been determined and agreed upon. (Wireless Coalition Ex. 1.0 at 4:77-83 and 85-87, 6:127-8:172 and Ex. 2.0 at 2:27-33 and 35-37, 5:91-94, 6:111-12, 8:172-10:198 and Ex. 5.0 at 7:129-8:140 and

148-49, 9:154-55, 161-62 and 167-68; Tsuyuki, 8/13/02 Tr. 846:11-19, 847:7-19; see Verizon Ex. 6.0 at 7:123-24.)

The wholesale special access circuits that incumbent LECs provide frequently fail (Wireless Coalition Ex. 1.0 at 4:75-77 and Ex. 2.0 at 2:35-37, 11:225-28 and 231-34 and Ex. 6.0 at 5:78-83, 6:87-91 and 102-04, 9:152-58, 9:172-10:175 and Ex. 7.0 at 5:67-70), which causes telephones calls to be dropped and may preclude wireless customers from utilizing their wireless telephones to place or receive calls, including emergency calls, until service on the failed circuits is restored. (Wireless Coalition Ex. 1.0 at 5:90-93 and Ex. 2.0 at 6:113-14, 12:256-61 and Ex. 6.0 at 6:107-7:113 and Ex. 7.0 at 6:103-07; Tsuyuki, 8/13/02 Tr. 797:7-11.) The failure of wholesale special access circuits also can result in degradation of the voice quality of wireless telephone calls. (Tsuyuki, 8/13/02 Tr. 797:1-6.) Problems like these are exacerbated by the lengthy time periods that often pass before failed circuits are repaired. (Wireless Coalition Ex. 2.0 at 11:238-12:253 and Ex. 6.0 at 6:95-99, 9:159-68, 10:178-79 and Ex. 7.0 at 6:86-91.)

Communications between incumbent LECs and Wireless Coalition members is poor. Specifically, the monthly performance reports that some incumbent LECs provide Wireless Coalition members are untimely and difficult to understand. (Wireless Coalition Ex. 1.0 at 5:99-105 and Ex. 6.0 at 7:122-8:131.) The reports often include wholesale special access performance data that are significantly different than the performance results tracked by the Coalition members. (Wireless Coalition Ex. 1.0 at 5:99-105 and Ex. 2.0 at 7:132-41 and Ex. 6.0 at 8:132-36.) When advised of such discrepancies, incumbent LECs have failed and refused to resolve the issues giving rise to the discrepancies. (Wireless Coalition Ex. 1.0 at 5:106-09 and Ex. 2.0 at 7:142-46 and Ex. 6.0 at 8:144-46; Testimony of Rajesh Tank ("Tank"), 8/13/02 Tr. 876:22-

877:3, 884:10-14, 885:9-886:3, 887:8-17.) Wireless Coalition members cannot disclose performance reports, which generally are confidential, and carriers do not provide the reports to regulatory bodies. (Testimony of Richard Dobson ("Dobson"), 7/24/02 Tr. 586:5-12, 609:2-5.) Also, and quite important, not all incumbent LECs provide performance reports regarding wholesale special access services to Wireless Coalition members. (Wireless Coalition Ex. 1.0 at 5:99-105 and Ex. 2.0 at 6:130-7:146 and Ex. 6.0 at 7:125-26, 8:147-49 and Ex. 7.0 at 5:78 and Dobson, 7/24/02 Tr. 606:15-17.)

As a result of the poor quality wholesale special access services that incumbent LECs provide Wireless Coalition members, Wireless Coalition members lose significant revenue, and Illinois consumers of wireless telecommunications services experience some significant problems with wireless services, which causes them to view wireless service as less reliable than landline service. (Wireless Coalition Ex. 1.0 at 5:90-98, 9:181-83 and 186-87 and Ex. 2.0 at 2:27-33, 6:111-12 and 121-29, 12:258-61 and Ex. 6.0 at 6:108-7:113 and Ex. 7.0 at 6:103-07, 7:110-14 and Tsuyuki, 8/13/02 Tr. 797:7-11, 832:19.) Such negative perceptions create a competitive disadvantage for Wireless Coalition members, which impairs their ability to compete in Illinois' telecommunications market. (Wireless Coalition Ex. 1.0 at 5:94-98 and Ex. 2.0 at 2:35-36, 6:119-29 and Ex. 6.0 at 5:76-77, 7:114-21 and Ex. 7.0 at 7:112-13; Tsuyuki, 8/13/02 Tr. 798:3-5 and 13.) The establishment of performance measures, standards and, in particular, remedies, should prompt needed improvements in wholesale special access service quality. (Wireless Coalition Ex. 1.0 at 9:193-10:102 and Ex. 2.0 at 13:267-277 and Ex. 4.0 at 3-4, 7-9 and Ex. 5.0 at 10:175-85; see Ameritech Ex. 4.0 at 3:55-58; Testimony of James Ehr, 8/13/02 Tr. 772:4-19; Testimony of Melanie K. Patrick, Ph.D., 7/24/02 Tr. 424:10 – 425:5.)

III. ARGUMENT

A. PURSUANT TO THE LEGISLATIVE MANDATE IN SECTION 13-712(g) OF ARTICLE 13 OF THE PUBLIC UTILITIES ACT, THE COMMISSION SHOULD ESTABLISH PERFORMANCE MEASURES, STANDARDS AND REMEDIES FOR WHOLESALE SPECIAL ACCESS SERVICES

1. Section 13-712(g) of Article 13 Mandates Establishment And Implementation Of Carrier To Carrier Wholesale Service Quality Rules And Remedies

Section 13-712(g) of Article 13 of the Act states:

The Commission shall establish and implement carrier to carrier wholesale service quality rules and establish remedies to ensure enforcement of the rules.

220 ILCS 5/13-712(g).

The clear import of this broad and non-restrictive statutory language is that the Commission must establish rules and remedies applicable to any and all inter-carrier wholesale telecommunications services that, in its discretion, merit regulation. Accordingly, this is the directive that should inspire the Commission's actions in this proceeding.

The Illinois Supreme Court repeatedly has held that the fundamental canon of statutory construction is "to determine and give effect to the intent of the legislature." Petersen v. Wallach, 198 Ill. 2d 439, 444, 764 N.E.2d 19, 22 (2002); Michigan Ave. Nat'l Bank v. County of Cook, 191 Ill. 2d 493, 503-04, 732 N.E.2d 528, 535 (2000); Ragan v. Columbia Mutual Ins. Co., 183 Ill. 2d 342, 350-51, 701 N.E.2d 493, 497 (1998). The best indicator of legislative intent is the language of a statute. Petersen, 198 Ill. 2d at 444, 764 N.E.2d at 22 ("The best means of determining legislative intent is through the statutory language."); Michigan Ave. Nat'l Bank, 191 Ill. 2d at 504, 732 N.E.2d at 535; Ragan, 183 Ill. 2d at 350-51, 701 N.E.2d at 496; see also Illinois Graphics Co. v. Nickum, 159 Ill. 2d 469, 479, 639 N.E.2d 1282, 1287 (1994) ("When

the drafters' intent can be ascertained from the statutory language, it must be given effect without resort to other aids for construction."); Hanover Ins. Co. v. Board of Educ., 240 Ill. App. 3d 173, 175, 608 N.E.2d 183, 184 (1st Dist. 1992).

The two phrases in Section 13-712(g) that are most pertinent to the determination of the legislature's intent are: (a) "carrier to carrier", and (b) "wholesale service". As demonstrated below, these phrases show that wholesale service quality rules and remedies may and should be established for any and all inter-carrier wholesale transactions involving telecommunications services, including wholesale special access services.

- a. "Carrier to carrier" includes transactions between local exchange carriers and wireless carriers.

The word "carrier", as used in Section 13-712(g), is a reference to a "telecommunications carrier". See 220 ILCS 5/13-220 and 5/13-712; cf. 15 ILCS 205/6.5(b-5) ("Attorney General Act") (emphasis added) (defining "telecommunications carrier" to include "any carrier as defined in Section 13-202 of the Public Utilities Act."). The term "telecommunications carrier" means any "corporation, company, association . . . that owns, controls, operates or manages, within this State, directly or indirectly, for public use, any plant, equipment or property used or to be used for or in connection with . . . telecommunications services between points within this State which are specified by the user." 220 ILCS 5/13-202.

Like the incumbent LECs, each member of the Wireless Coalition is certified to provide and is providing telecommunications services for public use in Illinois. (Wireless Coalition Ex. 1.0 at 3:48-50 and Ex. 2.0 at 2:52-56 and Ex. 5.0 at 4:55-63.) Thus, each member of the Wireless Coalition is a "carrier" under Section 13-712(g).

Accordingly, “carrier to carrier”, as used in Section 13-712(g) of the Act, includes transactions between incumbent LECs and wireless carriers.

- b. “Wholesale service” includes wholesale special access service.

Although the phrase “wholesale service” is not expressly defined in Article 13 of the Act, its meaning is clearly reflected in Article 13’s definition of “retail telecommunications service”, which means:

a telecommunications service sold to an end user. *Retail telecommunications service’ does not include a telecommunications service provided by a telecommunications carrier to a telecommunications carrier, including to itself, as a component of, or for the provision of, telecommunications service.*

220 ILCS 5/13-220 (emphasis added). “End user” means: “any person, corporation, partnership, firm, municipality, cooperative, organization, governmental agency, building owner, or other entity provided with a telecommunications service for its own consumption and not for resale.” 220 ILCS 5/13-217.

Based on the corollary nature of the terms “retail” and “wholesale” and the express terms of the definitions of “retail telecommunications service” and “end user”, that which is not a “retail telecommunications service” is a “wholesale telecommunications service”. See Webster’s Dictionary of the English Language at 2089 (“wholesale” refers to “the selling of goods in relatively large quantities; especially, the sale of goods to retailers who then sell them to the consumer: opposed to retail”); Michigan Ave. Nat’l Bank, 191 Ill. 2d at 510, 732 N.E.2d at 538 (relying on dictionary to determine plain meaning of statutory language). Accordingly, “wholesale service”, as used in Section 13-712(g) of Article 13, should be construed to mean “a telecommunications service provided by a telecommunications carrier to a telecommunications carrier . . . as a component of, or for the provision of,

telecommunications service;" a telecommunication service not sold to an "end user". Cf. 220 ILCS 5/13-217 and 13-5/220. The special access services Wireless Coalition members purchase from incumbent LECs fit squarely within this definition. Thus, they constitute wholesale services.

Accordingly, by Section 13-712(g) of Article 13, the legislature authorized the Commission to regulate inter-carrier wholesale special access service transactions. Because of the critical importance of such services to Wireless Coalition members and others, the Commission should fully exercise this authority. See Petersen, 198 Ill. 2d at 445, 764 N.E.2d at 23 ("When the language of an enactment is clear, it will be given effect without resort to other interpretive aids."); Michigan Ave. Nat'l Bank, 191 Ill. 2d at 504, 732 N.E.2d at 535 ("The statutory language must be given its plain and ordinary meaning, and, where the language is clear and unambiguous, we must apply the statute without resort to further aids of statutory construction."); Ragan, 183 Ill. 2d at 351, 701 N.E.2d at 497.

2. Construing Section 13-712(g) of Article 13 To Apply To Wholesale Special Access Services Comports With All Established Principles Of Statutory Construction

Review of the language of Section 13-712(g) shows that the legislature did not limit or restrict the Commission's authority to establish and implement wholesale service quality rules and remedies in any way. In particular, as demonstrated above, the legislature did not limit the type of telecommunications carriers subject to the Commission's wholesale service quality rules and remedies, and it did not limit the type of wholesale services subject to regulation. See 220 ILCS 5/13-712(g). On the contrary, the legislature plainly authorized and directed the Commission, subject to its discretion, to establish rules and remedies governing any and all inter-carrier transactions involving wholesale telecommunications services. This construction of

Section 13-712(g) is supported not only by the express language of Section 13-712(g) but by the purpose of Article 13. See Petersen, 198 Ill. 2d at 445, 764 N.E.2d at 23 (“[W]hen the meaning of a statute is not clearly expressed in the statutory language, a court may look beyond the language employed and consider the purpose behind the law and the rules the law has designed to remedy.”); Michigan Ave. Nat’l Bank, 191 Ill. 2d at 504, 732 N.E.2d at 535-36; Ragan, 183 Ill. 2d at 351, 701 N.E.2d at 49.

Article 13 of the Act, including newly enacted Section 13-712(g), shows that Illinois is committed to the development and deployment of a full panoply of competitive telecommunications services, utilizing both new and existing technologies. 220 ILCS 5/13-102, 13-103 and 13-407. Among other things, the recent amendments to Article 13: (1) encourage competitive LECs and wireless telecommunications carriers to utilize the networks of incumbent LECs to provide telecommunications services to end users, 220 ILCS 5/13-801; (2) direct the Commission to establish service quality rules for basic local service, 220 ILCS 5/13-712(c); (3) direct the Commission to establish wholesale service quality rules, 220 ILCS 5/13-712(g); (4) expand the bases on which market participants can seek relief from the Commission if subjected to conduct that impedes the development of competition, 220 ILCS 5/13-514; and (5) authorize the Commission to assess and recover increased civil penalties from telecommunications carriers that impede competition. 220 ILCS 5/13-516.

The clear purpose of these comprehensive amendments is to promote the development and deployment, throughout Illinois, of quality telecommunications services, including both new and existing services, and to facilitate active competition in the Illinois market. The latter goal is reflected in the amendments designed to ensure that current and future market participants, who are or may be highly

dependent on services provided by incumbent LECs, will not be stymied by anti-competitive practices of such carriers. See id. As the legislature plainly recognized, fair carrier to carrier relations are critical to the development of a competitive and technologically varied telecommunications industry. Id. Thus, wholesale special access services, which are critical to the provisions of wireless telecommunications services, should be one of the inter-carrier wholesale telecommunications services with respect to which the Commission establishes and implements service quality rules pursuant to Section 13-712(g).¹

3. Limiting Section 13-712(g) of Article 13 To
Basic Local Exchange Service Violates
Applicable Cannons Of Statutory Construction

In view of the express language of Section 13-712(g), the purpose of Article 13 of the Act and the well-established principles of statutory construction set forth above, the Commission's authority to establish and implement rules and remedies governing wholesale service cannot reasonably be constrained to one particular category of wholesale service. However, notwithstanding the force of the applicable authority, Ameritech, Verizon and Citizens have asserted that pursuant to Section 13-712(g), the Commission only can establish wholesale service quality rules and remedies for services used to provide basic local exchange service. Because wholesale special

¹ Also, Section 13-801(a) of Article 13 of the Act obligates a carrier to provide a requesting telecommunications carrier with network elements "on just, reasonable, and nondiscriminatory rates, terms and conditions to enable the provision of any and all existing and new telecommunications services within the LATA...." 220 ILCS 5/13-801(a). The phrase "network element" means "a facility or equipment used in the provision of a telecommunications service. The term also includes features, functions, and capabilities that are provided by means of the facility or equipment, including, but not limited to, subscriber number, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service." 220 ILCS 5/13-216. Because wholesale special access circuits are "network elements", establishing rules regarding wholesale special access services will facilitate the enforcement of Section 13-801(a) by, among other things, setting standards of reasonable performance for wholesale special access circuits.

access services are not used to provide basic local exchange service, these parties assert that the Commission *has no authority* to establish wholesale service quality rules and remedies for such services. The Commission should summarily reject these erroneous assertions. Besides the fact that they directly contravene the above authority, they also violate other canons of statutory construction.²

Section 13-712(g) does not include language that expressly limits its applicability to basic local exchange service. See 220 ILCS 5/13-712(g). Therefore, no such limitation properly can be read into Section 13-712(g). See Petersen, 198 Ill. 2d at 448, 764 N.E.2d at 24 (rejecting appellant's attempt to restrict statutory provision to certain types of distributions because the statute did not include any such limitations); Michigan Ave. Nat'l Bank v. County of Cook, 191 Ill. 2d at 505, 732 N.E.2d at 535-36 (discerning "no language within this statutory provision which indicates that the General Assembly intended to confine the scope of [statutory] immunity to preventive health examinations," court rejected plaintiff's contention that statutory immunity for failure to adequately examine a patient should be limited in any way). If the legislature had intended to limit Section 13-712(g) to basic local exchange service, it could have and would have done so in the same way it limited other subparts of Section 13-712, by expressly including the phrase "basic local exchange service" therein. See 220 ILCS 5/13-712(a) – (f). Petersen is again instructive. In Petersen, the court held:

If the legislature intended to limit the application of section 13-214.3(d) as defendant asserts, it certainly could have expressly limited the Act to probate distributions or by expressly excluding nonprobate distributions.

² For the same reason, the Commission should reject Citizens' contentions that Section 13-712(g) should be limited to wholesale services using analog circuits or wholesale services purchased through interconnection agreements. (CTC-Illinois Ex. 1.0 at 17-473-21:549 and Ex. 2.0 at 8:210-9:239.)

Id. at 446, 764 N.E.2d at 23; Michigan Ave. Nat'l Bank, 191 Ill. 2d at 508, 732 N.E.2d at 537 (rejecting plaintiff's plea to engraft a limitation onto a statute; citing additional authorities to support same); Ragan, 183 Ill. 2d at 351, 701 N.E.2d at 497 ("A court should not depart from the language of the statute by reading into it exceptions, limitations or conditions that conflict with the intent of the legislature.").³

Also, because wholesale special access services are not used to provide "basic local exchange service", limiting Section 13-712(g) to wholesale services used for basic local exchange service would prevent the Commission from establishing rules and remedies to promote improvements in the quality of wholesale special access services.⁴ Stated otherwise, it would frustrate the legislative intent of Article 13 of the Act. (See supra at 11-12.)

³ The title of Section 13-712, "Basic local exchange service quality; customer credits", does not alter this conclusion. Michigan Ave. Nat'l Bank, 191 Ill. 2d at 505-06, 732 N.E.2d at 536 (quoting Brotherhood of R.R. Trainmen v. Baltimore and Ohio R.R. Co., 331 U.S. 519, 528-29, 67 S. Ct. 1387, 1392 (1947)) (emphasis added) ("When the legislature enacts an official title or heading to accompany a statutory provision, that title or heading is considered only as a 'short-hand' reference to the general subject matter involved' in that statutory section, and *cannot limit the plain meaning of the text.*").

⁴ "Basic local exchange service" means "residential and business lines used for local exchange telecommunications service as defined in Section 13-204 of this Act" 220 ILCS 5/13-712(b). "Local exchange telecommunications service" means "telecommunications service between points within an exchange . . . or the provision of telecommunication service for the origination or termination of switched telecommunications services." 220 ILCS 5/13-204. "Exchange" means "a geographic area for the administration of telecommunications services, established and described by the tariff of a telecommunications carrier providing local exchange telecommunications service, and consisting of one or more contiguous central offices, together with associated facilities used in providing local exchange telecommunications service. To the extent practicable, a municipality, city, or village shall not be located in more than one exchange" 220 ILCS 5/13-206. Because the function of wholesale special access services is not limited to providing telecommunications service within a local exchange, such services are not services used to provide "basic local exchange service". 220 ILCS 5/13-204 and 13/206.

4. The Commission Has Jurisdiction Over
The Wholesale Special Access Services
Utilized By Wireless Coalition Members

The substantial majority of the wholesale special access services used by Wireless Coalition members are both intrastate and intraLATA. (Wireless Coalition Ex. 1.0 at 3:61-62 and Ex. 2.0 at 3:51-56 and Ex. 5.0 at 5:71-76. Significantly, there currently are no incumbent LECs that can provide interLATA services. (Tsuyuki, 8/13/02 Tr. 861:19 – 862:1.⁵) Thus, when a wireless cell site is in a different LATA than the wireless carrier's switch, wireless telephone signals must be transported over wholesale special access circuits from the cell site to facilities operated by an inter-exchange carrier ("IXC"), which carrier transports the signals across the LATA boundary to wholesale special access circuits provisioned by a LEC in the adjoining LATA. (Tsuyuki, 8/13/02 Tr. 836:5 – 837:13, 872:11-21.) The signals then are transported over that LEC's facilities to the wireless carrier's switch. (Tsuyuki, 8/13/02 Tr. 872:11-21.) Thus, the wholesale special access services Wireless Coalition members obtain from Ameritech and Verizon are all intraLATA, and the Commission clearly has jurisdiction over intrastate wholesale special access telecommunications services. See 220 ILCS 5/13-100 et seq.

The fact that the Federal Communications Commission ("FCC") currently is considering issues relating to *interstate* wholesale special access services does not negate the Commission's jurisdiction over *intrastate* wholesale special access services or indicate that the Commission should postpone taking any action with respect to such services until the FCC concludes its rulemaking proceeding. See In Re Performance Measurements and Standards for Interstate Special Access Services, FCC

⁵ Although the cited portion of the Transcript is confidential, the testimony cited above is not proprietary.

Docket No. 01-321, FCC 01-339. In fact, in its proceeding, the FCC even sought comments on the manner in which state commissions can participate in enforcing *interstate* wholesale special access performance measures and standards, if any are adopted. (Id. at 7.)

B. WIRELESS TELECOMMUNICATIONS CARRIERS MUST BE
ABLE TO OBTAIN HIGH QUALITY WHOLESALE SPECIAL
ACCESS SERVICES TO EFFECTIVELY AND EFFICIENTLY
COMPETE IN ILLINOIS' TELECOMMUNICATIONS MARKET

Wholesale special access services are essential to the Wireless Coalition members' ability to provide wireless telecommunications services in the Illinois market. (Wireless Coalition Ex. 2.0 at 2:57-64, 3:63 – 4:68, 6:110-11 and Ex. 3.0 at 4:68-71 and Ex. 5.0 at 4:64-5:6 and Ex. 7.0 at 6:94-99; Tsuyuki, 8/13/01 Tr. 813:20 – 815:8.) Wireless Coalition members rely on wholesale special access services to connect critical elements in their networks, i.e., cell sites and switches. (Wireless Coalition Ex. 1.0 at 3:53-57 and Ex. 2.0 at 2:57-64, 3:63 – 4:68, 6:110-11 and Ex. 3.0 at 3:64-4:74 and Ex. 5.0 at 5:66-67 and Ex. 8.0 at 4:66-68.) Thus, to consistently provide high quality wireless telecommunications services to Illinois consumers and to successfully compete with incumbent landline carriers and other providers in Illinois' telecommunications market, Wireless Coalition members must be able to obtain reliable, high quality wholesale special access services. The inability to obtain such services negatively impacts the operation of the Wireless Coalition members' networks and threatens their ability to effectively and efficiently provide wireless telecommunications services to Illinois consumers. (Wireless Coalition Ex. 1.0 at 5:90-93, 9:181 and 186-87 and Ex. 2.0 at 6:113-18, 12:258-59 and Ex. 6.0 at 6:105-108, 7:111-13 and Ex. 7.0 at 6:103-07, 7:110-114.) It also frustrates the legislature's

intent to promote the development and deployment of new and existing telecommunications services throughout Illinois. (Supra at 11-12.)

1. Reliable Wholesale Special Access
Services Are Critical To Consistent, High
Quality Wireless Network Operations

The Wireless Coalition members' networks are comprised of multiple cell sites. (Wireless Coalition Ex. 1.0 at 3:53-57 and Ex. 2.0 at 3:62-64 and Ex. 5.0 at 4:64 – 5:67.) When a person places a wireless telephone call, these cell sites receive the components of the call, i.e., voice and data signals, which must be transported for further processing to the carriers' switching centers. (Wireless Coalition Ex. 1.0 at 3:53-57 and Ex. 2.0 at 3:57-4:68, 6:110-11; Tsuyuki, 8/13/02 Tr. 797:7-11.) It is from the switching centers that the signals are routed to the call's termination point, i.e., the telephone of the party with whom the caller wishes to speak. (Wireless Coalition Ex. 1.0 at 5:90-93 and Ex. 2.0 at 3:57-4:68, 6:110-11; Tsuyuki, 8/13/02 Tr. 797:7-11.) Wireless Coalition members use wholesale special access services to perform the critical high speed transport of telephone signals from cell sites to switching centers. (Wireless Coalition Ex. 2.0 at 3:62-4:68 and Ex. 3.0 at 4:71-74 and Ex. 7.0 at 6:97-99.) The basic process by which this transport occurs is as follows.

First, a signal is received at a cell site in the wireless carrier's network. The signal is then transported to a point of presence on the network of the LEC that is providing the wholesale special access services ("Providing Carrier"). (Wireless Coalition Ex. 1.0 at 3:53-57 and Ex. 2.0 at 3:62-4:68 and Ex. 5.0 at 4:64 – 5:67; see Tsuyuki, 8/13/02 Tr. 874:12-22.) From there, the signal is carried over a special access circuit on which the wireless carrier has purchased capacity from the Providing Carrier to a central office or some type of intermediary facility in the Providing Carrier's network. (Wireless Coalition Ex. 2.0 at 4:72-79; Tsuyuki, 8/13/02 Tr.

872:11-21, 874:14-22.) When the signal is transported to an intermediary facility, another special access circuit is used to transport the signal to a central office. (Wireless Coalition Ex. 3.0 at 3:64-4:74; see Tsuyuki, 8/13/02 Tr. 874:12-22.)

After the signal reaches a central office, it is carried over the Providing Carrier's network facilities towards the wireless carrier's switching center. (Wireless Coalition Ex. 1.0 at 3:53-57 and Ex. 2.0 at 3:57-4:68, 6:110-11 and Ex. 3.0 at 3:64-4:74; see Tsuyuki, 8/13/02 Tr. 874:12-22.) Prior to reaching the switching center, the signal is transferred to another special access circuit and is transported by this special access circuit to facilities in the wireless carrier's network that transport the signal to the wireless carrier's switch. (Wireless Coalition Ex. 1.0 at 3:53-57 and Ex. 2.0 at 3:57-4:68, 6:110-11 and Ex. 3.0 at 3:64-4:74 and Ex. 7.0 at 6:94-99; see Tsuyuki, 8/13/02 Tr. 874:12-22.)

From the first time a telephone signal is transferred from a wireless carrier's network to the facilities of a Providing Carrier until the time the signal is transferred back to facilities in the wireless carrier's network for transport to the wireless carrier's switch, the Providing Carrier has complete control over the critical transportation process. It is the entirety of this portion of the transportation process that comprises the "wholesale special access service" that wireless carriers purchase from Providing Carriers. (Wireless Coalition Ex. 3.0 at 3:61-4:86; see Tsuyuki, 8/13/02 Tr. 848:13-19.) Thus, "wholesale special access service" encompasses much more than initial connections between a wireless carrier's facilities and the facilities of the Providing Carrier. (See Tsuyuki, 8/13/02 Tr. 873:21 – 874:22.)

As demonstrated above, wholesale special access services are critical to the provision of wireless telecommunications services. When special access circuits fail, cell site to switch connections are lost, wireless telephone signals cannot be

transported and wireless telephone calls cannot be completed. (Wireless Coalition Ex. 1.0 at 5:90-93 and Ex. 2.0 at 6:113-18, 12:258-59 and Ex. 6.0 at 6:105 – 7:111 and Ex. 7.0 at 6:103-07; Tsuyuki, 8/13/02 Tr. 797:7-11.) As a result of a circuit failure, a single circuit cell site will go completely out of service. (E.g., Wireless Coalition 6.0 at 6:105-08 and Ex. 7.0 at 6:103-5.) Also, service at cell sites served by multiple circuits may be impaired because after one circuit fails, the remaining circuits may become overloaded by signals normally handled by the failed circuit. (See e.g., Wireless Coalition Ex. 2.0 at 6:117-18.)

When a cell site goes down, wireless customers can experience serious problems with their wireless telecommunications services. Their ongoing telephone calls will be dropped, and they may be unable to place or receive any new telephone calls until the failed circuit is repaired, including calls to emergency service personnel. (Wireless Coalition Ex. 1.0 at 5:90-93 and Ex. 2.0 at 6:113-14, 12:256-61 and Ex. 6.0 at 6:107 – 7:113.) Even if customer calls are picked up by another cell site in the wireless carrier's network, their calls may be dropped or the quality of their calls may be otherwise impaired due to overloading at the alternate site. (See Wireless Coalition Ex. 2.0 at 6:117-18.) Also, the quality of their calls may be adversely affected by weakness of the signals originating in the area of the downed cell site. (See Wireless Coalition Ex. 2.0 at 6:109-16.) In view of these serious problems, it is clear that reliable, high quality wholesale special access services are essential for high quality wireless telecommunications services.

2. In Illinois, Ameritech And Verizon Supply Substantially All Wholesale Special Access Services And The Poor Quality Of Their Service Adversely Impacts The Wireless Coalition Members' Ability To Compete
Coalition Members' Ability To Compete

The evidence in the record shows that the quality of wholesale special access services provided by incumbent LECs Ameritech and Verizon, i.e., Level 1 carriers under Staff's Proposed Rule, is and has long been of poor quality. (Wireless Coalition Ex. 1.0 at 4:74-75 and Ex. 2.0 at 2:35-36 and Ex. 3.0 at 3:64-4:74 and Ex. 5.0 at 4:49-51 and Ex. 6.0 at 5:76-77 and Ex. 7.0 at 5:83.)

The problems that result from service quality issues – dropped telephone calls, the inability to place or receive calls, poor call quality – frustrate wireless customers and may prompt them and others to believe that wireless telecommunications services are not as reliable as landline services. (Wireless Coalition Ex. 1.0 at 5:90-98, 9:181-83 and 186-87 and Ex. 2.0 at 2:27-33, 6:111-12 and 121-29, 12:258-61 and Ex. 6.0 at 6:108-7:113 and Ex. 7.0 at 7:110-12.) Wireless customers and potential wireless customers may simply not realize that problems they experience with wireless telecommunications services may be caused by an incumbent LEC's poor quality wholesale special access services and have nothing to do with a wireless carrier's network facilities. (Tsuyuki, 8/13/02 Tr. 833:1-7 and 11-19.) As a result, wireless customers may rely on landline telephones instead of wireless telecommunications services and may even terminate their wireless service. (See Wireless Coalition Ex. 1.0 at 5:96-98 and Ex. 2.0 at 6:128-29 and Ex. 6.0 at 7:120-21 and Ex. 7.0 at 7:113-14.) Negative consumer perceptions about wireless telecommunications services adversely affect the Wireless Coalition members' ability to compete in Illinois' telecommunications market and constitute a competitive disadvantage. (Wireless

Coalition Ex. 2.0 at 6:119-29 and Ex. 6.0 at 7:119-20 and Ex. 7.0 at 7:110-2-14; Tsuyuki, 8/13/02 Tr. 798:3-5 and 13.)

The failure of special access circuits also causes Wireless Coalition members to incur greater operating costs (as a result of excessive manhours required to handle problems associated with a LEC's wholesale special access services) and to lose revenue (as a result of missed telephone calls). (Wireless Coalition Ex. 1.0 at 5:96-98, 9:181-83 and Ex. 2.0 at 6:111-12 and Ex. 6.0 at 6:95-99 and Ex. 7.0 at 5:83-86 and 6:100-05.) The loss of revenue attributable to poor quality wholesale special access services adversely impacts the Wireless Coalition members' ability to compete. (Wireless Coalition Ex. 1.0 at 9:182 and Ex. 2.0 at 6:127-28 and Ex. 6.0 at 7:119-20 and Ex. 7.0 at 7:112-13.) Losses of revenue may preclude Wireless Coalition members from making necessary capital expenditures and/or prevent them from timely recouping past expenditures. (Wireless Coalition Ex. 2.0 at 5:97-98, 6:121-29.)

The evidence also shows that with respect to providers of wholesale special access services, Wireless Coalition members essentially have no alternative but Level 1 incumbent LECs. (Wireless Coalition Ex. 8.0 at 5:107-6:114; WorldCom Ex. 1.0 at 3:49-60, 8:180 - 9:194; Testimony of Eric Panfil ("Panfil"), 8/13/02 Tr. 735:20-736:6; Dobson, 7/24/02 Tr. 568:9-14.) Ameritech is the largest provider of wholesale services in Illinois (Panfil, 8/13/02 Tr. 735:20 - 736:1-6), and Wireless Coalition members purchase approximately 95-100% of the wholesale special access services they require from Level 1 incumbent LECs. (Wireless Coalition Ex. 8.0 at 6:112-114.) To the extent there are alternative providers of wholesale special access services, it frequently is the case that such providers utilize Ameritech facilities to provide "last mile" connections (i.e., connections between cells sites and the alternative provider's nearest point of presence), where significant problems occur. (Wireless Coalition Ex.

8.0 at 5:107-09; see Ameritech Ex. 4.0 at 7:156-58, 10:231-35.) Thus, these alternative providers do not offer a true alternative to Ameritech's wholesale special access service. (Wireless Coalition Ex. 8.0 at 5:107-110.)⁶

Accordingly, it is imperative that incumbent Level 1 carriers improve the quality of their wholesale special access services, which Ameritech, at least, admits it now can do and could have done in the past. (See Dobson, 7/24/02 Tr. 616:4 – 617:13, 636:4 – 637:19.) In the absence of improvement, Wireless Coalition members will be unable to consistently provide Illinois consumers with high quality wireless telecommunications services, and their ability to effectively and efficiently compete in Illinois' telecommunications market will continue to be impaired. (Wireless Coalition Ex. 1.0 at 5:94-98 and Ex. 2.0 at 2:35-36, 6:119-29 and Ex. 6.0 at 5:76-77, 7:114-21 and Ex. 7.0 at 7:112-13; see WorldCom Ex. 1.0 at 10:208-29.) In the absence of enforceable service quality rules and reporting requirements, there is no way to ensure that Level 1 carriers will consistently provide reliable wholesale special access services.

C. TO SATISFY THE REQUIREMENTS OF SECTION 13-712(g) OF THE PUBLIC UTILITIES ACT, THE COMMISSION SHOULD DEFINE SPECIFIC RULES AND REMEDIES FOR WHOLESALE SPECIAL ACCESS TELECOMMUNICATIONS SERVICES

1. The Commission Should Ensure That Its Definition Of "Wholesale Special Access" Encompasses All Of The Wholesale Special Access Services Wireless Coalition Members Need To Compete

As described above, the wholesale special access services utilized by Wireless Coalition members involve the use of multiple special access circuits, which are used to connect wireless facilities to facilities of a Providing Carrier and also may be used to

⁶ Also, to utilize wholesale special access services offered by alternative providers, Wireless Coalition members generally have to agree to incur prohibitively expensive construction costs associated with provisioning special access circuits from their cell sites to the provider's nearest point of presence. (Wireless Coalition Ex. 8.0 at 5:104-06.)

interconnect the Providing Carrier's facilities or to connect the Providing Carrier's facilities to the facilities of another incumbent LEC, competitive LEC or IXC. (Supra at 3-4, 15 and 17-18; Tsuyuki, 8/13/02 Tr. 836:5 – 837:13, 872:11-21.) It is through these various connections that a wireless carrier's cell sites are connected to its switches.

To achieve improved wholesale special access service quality, the definition of "wholesale special access" included in the Commission's Part 731 rule must encompass all elements of the wholesale special access services Wireless Coalition members use to provide wireless telecommunications services. Staff's definition of "wholesale special access", which states:

"Wholesale Special Access" means Wholesale Service utilizing a dedicated non-switched transmission path used for carrier-to-carrier services from the customer's NID (Network Interface Device) or POI (Point Of Interface) to the carrier's POI (Point Of Interface). A non-switched transmission path may include, but is not limited to, DS1, DS3, and OCn facilities as well as links for SS7 signaling, database queries, and SONET ring access, (ICC Staff Ex. 7.1 at §731.105),

does not satisfy this requirement. Although it is intended to encompass "what the ILEC owns", it actually only encompasses some of what the ILEC owns, i.e., it only encompasses some of the critical connections made by the wholesale special access services used to transport wireless telephone signals from cell sites to switches. (Testimony of Russell Murray, Tr. 7/23/02 291:3-14; Wireless Coalition Ex. 3.0 at 59 – 4:86; Tsuyuki, 8/13/02 Tr. 873:21 – 874:18.)

As previously set forth, the connections made by wholesale special access services can be between (i) network elements within an incumbent LEC's network, (ii) the networks of different incumbent LECs; or (iii) a wireless or LEC's network and the network of a competitive LEC or IXC. (Supra at 3-4, 15 and 17-18.) To capture

these various critical connections, Staff's proposed definition of "Wholesale Special Access" should be revised to state:

"Wholesale Special Access" means a Wholesale Service utilizing a dedicated non-switched transmission path used for carrier-to-carrier services from the Requesting Carrier's NID (Network Interface Device) or POI (Point of Interface) to one or more of the following: (1) the Provisioning Carrier's POI (Point of Interface); (2) another NID or POI on the Requesting Carrier's network; or (3) another carrier's network. A non-switched transmission path may include, but is not limited to, DS1, DS3 and OCn facilities as well as links for SS7 signaling, database queries, and SONET ring access. "Wholesale Special Access" includes Wholesale Special Access Services provided to a wireless carrier or other telecommunication carrier.

Ex. A at § 731.105.

2. The Commission Should Define The Specific Wholesale Special Access Performance Measures, Standards and Remedies That Level 1 Carriers Must Include In Their Proposed Wholesale Service Quality Plans

As the Commission is aware, Level 1 carriers Ameritech and Verizon have existing wholesale service quality plans that contain performance measures, standards and remedies for non-wholesale special access services. (Ameritech Ex. 1.0 at 20:492-95; Verizon Ex. 2.0 at 2:41 – 3:45; Panfil, 8/13/02 Tr. 738:5 – 739:4, 742:15-20; Testimony of Jerry Holland ("Holland"), 7/23/02 Tr. 228:5-9; Testimony of Faye Raynor ("Raynor") 7/23/02 Tr. 260:16-20; Wireless Coalition Ex. 3.0 at 12:257-58.) To satisfy the requirements of Staff's Proposed Rule, Level 1 carriers may file their existing performance plans (after including measures, standards and remedies for wholesale special access services) for review and approval by the Commission. (ICC Staff Ex. 7.1 at §731.200-731.325.)⁷ Accordingly, when Level 1 carriers file proposed

⁷ Even if a Level 1 carrier chooses not to do so, the proposed Wholesale Service Quality Plan that it files for review by the Commission still must cover the wholesale services covered in its existing plan. (See ICC Staff Ex. 7.1 at §731.305.)

Wholesale Service Quality Plans pursuant to the procedures in Staff's Proposed Rule, the Commission, in large part, will be reviewing performance measures, standards and remedies that it and other interested parties have carefully considered in other dockets over the course of many, many months. Thus, it should not be particularly difficult, in the three month period provided in Staff's Proposed Rule, to resolve any issues that may arise. (ICC Staff Ex. 7.1 at §731.210.)

In connection with wholesale special access performance measures, standards and remedies, however, the situation will be entirely different. The Commission has not previously considered such provisions. Currently, no Level 1 carrier has established comprehensive and generally applicable performance measures, standards and remedies for wholesale special access services (see Dobson, 7/24/02 Tr. 611:10 – 621:4;⁸ Holland, 7/23/02 Tr. 225:3 – 226:22; Raynor, 7/23/02 Tr. 260:21 – 261:4) and wholesale special access performance measures and standards that have been proposed for adoption by Level 1 carriers have never been accepted. (Testimony of Karen K. Furbish, 7/23/02 Tr. 108:15 – 110:10; Dobson, 7/24/02 Tr. 575:5 – 576:16, 579:1-15.)

Despite this significant circumstance, Staff's Proposed Rule permits Level 1 carriers to select and define the wholesale special access performance measures, standards and remedies they will include in their proposed Wholesale Service Quality Plans without providing Level 1 carriers any specific direction, which at least one Level 1 carrier has indicated that it needs. (See ICC Staff Ex. 7.1 at §§731.305, 731.310 and 731.315; Ameritech Ex. 1.0 at 22:538-44.)

⁸ Ameritech has a few "Service Level Agreements" pertaining to wholesale special access services, but those agreements only apply to wholesale special access services purchased out of Ameritech tariffs. (Dobson, 7/24/02 Tr. 611:10 – 612:4.) Wireless Coalition members often take service pursuant to private contracts (see Tsuyuki, 8/13/02 Tr. 829:3-5), and Ameritech's "Service Level Agreements" do not apply.

The broad discretion Staff's Proposed Rule grants Level 1 carriers with respect to defining and establishing performance measures, standards and remedies for wholesale special access services will frustrate attempts to expeditiously enact appropriate wholesale service quality rules and remedies for such services. In all likelihood, the proposed plans Ameritech and Verizon will file will contain substantially different provisions for wholesale special access services. Also, to the extent the provisions seem to overlap, they may be defined in ways that render them completely inconsistent. These carriers' plans also may not include all of the measures, standards and remedies necessary to achieve significant improvements in the quality and reliability of wholesale special access services. Thus, if Level 1 carriers are not given direction regarding wholesale special access rules and remedies prior to filing their plans, Staff's proposed three-month window may not provide sufficient time to resolve all of the issues that may arise.

The broad discretion granted Level 1 carriers prejudices Wireless Coalition members and other carriers that utilize wholesale special access services because these carriers will have to decipher, assess and develop positions with respect to both Ameritech's and Verizon's plans, and, if necessary, *intervene and participate in both plan proceedings*, to object to the proposed plans. (See ICC Staff Ex. 7.1 at § 731.210.) Not only would this process be time consuming and expensive (see Testimony of Samuel S. McClerren, 7/24/02 Tr. 532:13-19, 534:12 – 535:13), which may unfairly preclude Wireless Coalition members from participating in the proceedings, it may not provide sufficient opportunity for thorough consideration of the wholesale special access-related provisions included in each Level 1 carrier's proposed plan. (Wireless Coalition Ex. 3.0 at 12:252 – 13:273.)

To remedy this situation, the Commission's order in this Docket should specifically define the wholesale special access-related performance measures, standards and remedies Level 1 carriers must include in their proposed Wholesale Service Quality Plans. In particular, the Commission should adopt the amended version of Staff's Proposed Rule included in Exhibit A hereto, which incorporates specific wholesale special access-related provisions, as its Part 731 rule.⁹ The proposed measures and standards are based on the Wireless Coalition members' service requirements, experience with wholesale special access services in Illinois and the capabilities of Level 1 carriers. (See Wireless Coalition Ex. 3.0 at 1:19 – 3:46, 3:61 – 4:86, 10:219 – 11:225, 12:252 – 13:273, 21:464-70, 25:540-46; Tsuyuki, 8/13/02 Tr. 846:11-19, 847:7-19; Ameritech Ex. 4.0 at 5:99-100 (for tariffed wholesale special access service, Ameritech provides a remedy for out-of-service events that exceed one minute), compare Ex. A § 731.310(l) (Wireless Coalition proposes a 99.98% standard for network availability); Wireless Coalition Ex. 2.0 at Ex. 1 at 2 (Ameritech's objective for restoral time on DS1 and DS3 special access circuits is 5 hours and 3 hours, respectively), compare Ex. A § 731.310(j) (Wireless Coalition proposes a 3 hour standard for repair time); Holland 7/23/02 Tr. 221:19 – 222:20 ("FOC" includes the due date for service against which date Verizon measures its performance), compare

⁹ Exhibit A is a revised version of Wireless Coalition Ex. 3.1. The Wireless Coalition made certain revisions to Wireless Coalition Ex. 3.1 to incorporate changes made in Staff's proposed rule and suggestions Staff made during the hearing in this Docket. For example, per Staff's suggestion, the Wireless Coalition deleted a sentence formerly included in Section 731.210 of Wireless Coalition Ex. 3.1. Compare Ex. A at § 731.210 to Wireless Coalition Ex. 3.1 at § 731.210. (See Tsuyuki, 8/13/02 Tr. 839:19 – 843:18.) Other revisions also were made to address issues raised at the hearing, and they are identified in this Brief. Other revisions were made to ensure fairness to all parties. They also are described in this Brief. The remaining revisions, which are few in number, serve only to clarify the Wireless Coalition's proposed rule.

Ex. A at § 731.105 (Wireless Coalition proposes a definition for FOC that includes a commitment date for service).) Equally important, adopting the rule in Exhibit A will not prejudice Level 1 carriers.¹⁰

3. If The Commission Identifies And Defines The Specific Wholesale Special Access Performance Measures That Level 1 Carriers Must Include In Their Proposed Wholesale Service Quality Plans, A Reasonable Alternative To The Wireless Coalition's Proposed Rule Would Be A Rule That Permits Level 1 Carriers To Propose Wholesale Special Access Performance Standards and Remedies

Should the Commission prefer to adopt a Part 731 rule that more closely tracks the format of Staff's proposed Level 1 procedures, the Wireless Coalition recommends that the Commission adopt the simplified version of Exhibit A that is attached hereto as Exhibit C. In the rule set forth in Exhibit C, Level 1 carriers are permitted to themselves establish performance standards and remedies relating to wholesale special access services. Ex. C at §§ 731.305, 731.310 and 731.315. However, to ensure that the standards and remedies Level 1 carriers include in their proposed plans will relate to meaningful wholesale special access performance measures, the performance measures to which the Level 1 carriers' standards and remedies must relate are defined and set forth in the rule. Ex. C at §§ 731.105 and 731.310.

¹⁰ Section 731.310 of the rule in Exhibit A states, among other things: "*For good cause shown, a measure or standard included in this Section 731.310 may be modified or deleted from a proposed Wholesale Service Quality Plan.* Ex. A at § 731.310 (emphasis added). Similarly, Section 731.315 in pertinent part states:" In connection with the performance Measures and Standards included in Section 731.310, each Wholesale Service Quality Plan shall include the Remedy provisions set forth below, *except for good cause shown.*" Ex. A at § 731.315 (emphasis added).

4. The Commission Should Define And Establish Specific Wholesale Special Access Performance Measures, Standards and Remedies For Level 2 Carriers

Staff's Proposed Rule does not require Level 2 carriers to comply with any performance measures or standards relating to wholesale special access services. (ICC Staff Ex. 7.1 at §§ 731.600 – 731.635.) Because members of the Wireless Coalition currently purchase and likely will in the future purchase wholesale special access services from such carriers (Wireless Coalition Ex. 1.0 at 4:71 and Ex. 2.0 at 5:87-88 and Ex. 8.0 at 6:112-14; Tsuyuki, 8/13/02 Tr. at 838:19-839:6) the Commission's Part 731 rule should include wholesale special access-related service quality rules and remedies for Level 2 carriers.

Requiring Level 2 carriers to satisfy wholesale special access-related performance measures and standards, subject to the imposition of remedies for failure to satisfy such standards, will help ensure that Level 2 carriers provide reliable wholesale special access services on which Wireless Coalition members can rely as they strive to provide consistently high quality wireless telecommunications services to more and more Illinois consumers. (Wireless Coalition Ex. 3.0 at 2:28-32.) In the absence of such provisions, Wireless Coalition members and others will have to continue to largely rely on Level 1 carriers to provide wholesale special access services as Level 1 carriers would be the only providers obligated and incented to provide reliable, high quality wholesale special access services. This practical limitation on the sources from which Wireless Coalition members and others can expect to obtain reliable wholesale special access services contravenes the legislature's intent that the Commission establish and implement wholesale service quality rules and remedies that will promote full development and deployment of quality telecommunications services. 220 ILCS 5/13-102, 13-103, 13-407 and 13-801.

Due to legitimate concerns regarding the comparatively limited resources, facilities, technical capabilities and manpower of Level 2 carriers, however, the Commission should not require Level 2 carriers to comply with multiple wholesale special access-related performance measures and standards. Rather, following the format of Staff's Proposed Rule, the Commission should simply require Level 2 carriers to comply with wholesale special access-related performance measures and standards for Firm Order Confirmations, Provisioning and Maintenance (along with appropriate remedies) as set forth in Exhibit A and in the alternative rule in Exhibit C Ex. A at §§ 731.600 - 731.635; Ex. C at §§ 731.600 - 731.635.¹¹

IV. CONCLUSION

For the reasons stated herein, and all of the reasons set forth in the record, the Wireless Coalition respectfully requests that the Commission adopt the rule set forth in Exhibit A hereto as its Part 731 rule. (A clean copy of the proposed rule is attached

¹¹ In view of certain testimony presented during the hearing, the Wireless Coalition revised Section 731.610(c) of its proposed rule to state: "For Maintenance and Repair Failures – Level 2 Carriers shall provide credits to 20% of the monthly recurring charge for each day beyond the timeframe set forth in Sections 731.605(c)(1) and 731.605(c)(3) that the Level 2 carrier fails to clear a Wholesale Out of Service trouble report for the services covered in Sections 731.605(c)(1) and 731.305(c)(3) of this Part, 10% of the monthly recurring charge for every 8 hours beyond the timeframe set forth in Sections 731.605(c)(2) and 731.605(c)(4) that the Level 2 carrier fails to clear a Wholesale Out of Service trouble report for the services covered in Sections 731.605(c)(2) and 631. 605(c)(4) of this Part, and 10% of the monthly recurring charge for every 5 hours beyond the timeframe set forth in Sections 731.605(c)(5) and 731.605(c)(6) that the Level 2 carrier fails to clear a Wholesale Out of Service trouble report for the services covered in Sections 731.605(c)(5) and 631. 605(c)(6) of this Part." Ex. A at § 731.610(c). (Tsuyuki, 8/13/02 Tr. at 819:6 – 820:8.)

as Exhibit B.) Alternatively, the Wireless Coalition recommends that the Commission adopt as its Part 731 the rule set forth in Exhibit C hereto.

Dated: September 25, 2002

Respectfully submitted,

PRIMECO PERSONAL COMMUNICATIONS
U.S. CELLULAR
VOICESTREAM WIRELESS (n/k/a T-MOBILE)

By _____
One of Their Attorneys

John W. McCaffrey
Kathleen R. Pasulka-Brown
Foley & Lardner
Three First National Plaza
70 West Madison Street
Suite 4200
Chicago, Illinois 60602
(312) 558-6600

PROOF OF SERVICE

I, Kathleen R. Pasulka-Brown, one of the attorneys for the Wireless Coalition (PrimeCo Personal Communications, U.S. Cellular and VoiceStream Wireless Corp.) hereby certify that a copy of the foregoing Initial Brief of The Wireless Coalition was filed on e-docket and copies were served on each of the persons on the attached Service List, at the addresses specified, by e-mail and in the manner indicated on the Service List, from Three First National Plaza, 70 W. Madison St., Chicago, Illinois 60602, on September 25, 2002.

Kathleen R. Pasulka-Brown

SERVICE LIST
ICC DOCKET NO. 01-0539

Leslie D. Haynes
ADMINISTRATIVE LAW JUDGE
ILLINOIS COMMERCE COMMISSION
160 N. LASALLE, C-800
CHICAGO, IL 60601
Lhaynes@icc.state.il.us

Claudia Sainsot
ADMINISTRATIVE LAW JUDGE
ILLINOIS COMMERCE COMMISSION
160 N. LASALLE, C-800
CHICAGO, IL 60601
Csainsot@icc.state.il.us

Terri L. Brieske
ATTY. FOR INTERVENORS
SCHIFF HARDIN & WAITE
6600 SEARS TOWER
CHICAGO, IL 60606
tbrieske@schiffhardin.com

Edward J. Cadieux
VICE PRESIDENT
MIDWEST REGULATORY
NUVOX COMMUNICATIONS
OF ILLINOIS, INC.
16090 SWINGLEY RIDGE RD., STE.
500
CHESTERFIELD, IL 63017
ecadieux@nuvox.com

Matt C. Deering
ATTY. FOR IITA
MEYER CAPEL, A
PROFESSIONAL CORPORATION
306 W. CHURCH ST.,
PO BOX 6750
CHAMPAIGN, IL 61826-6750
mdeering@meyercafel.com

Joseph E. Donovan
ATTY. FOR ILLINOIS RURAL
COMPETITIVE ALLIANCE
O'KEEFE, ASHENDEN, LYONS
& WARD
30 N. LASALLE ST., STE 4100
CHICAGO, IL 60602
Jedonovan@oalw.com

Douglas A. Dougherty
ILLINOIS TELECOMMUNICATIONS
ASSOCIATION, INC.
PO BOX 730
300 E. MONROE ST., STE. 306
SPRINGFIELD, IL 62705
ddougherty@ameritech.net

Carmen Fosco
OFFICE OF GENERAL COUNSEL
160 N. LASALLE ST., STE. C-800
CHICAGO, IL 60601-3104
cfosco@icc.state.il.us

Hans Germann
ATTY. FOR ILLINOIS BELL
TELEPHONE COMPANY
MAYER, BROWN, ROWE & MAW
190 SOUTH LASALLE STREET
CHICAGO, IL 60603
hgermann@mayerbrownrowe.com

John Gomoll
AT&T
222 W. ADAMS - FL. 15
CHICAGO, IL 60606
Gomolj@att.com

Michael Guerra
ATTY. FOR VERIZON
NORTH/SOUTH INC.
SONNENSCHN NATH & ROSENTHAL
8000 SEARS TOWER
CHICAGO, IL 60606
mguerra@sonnenschein.com

William A. Haas
MCLEODUSA TELECOMMUNICATIONS
SERVICES, INC.
6400 C ST., S.W.
PO BOX 3177
CEDAR RAPIDS, IA 52406-3177
whaas@mcleodusa.com

Cheryl Hamill
ATTORNEY
LAW DEPARTMENT
AT&T
SUITE 1500, 222 W. ADAMS
CHICAGO, IL 60606
chamill@att.com

Peter R. Healy
MANAGER
CLEC EXTERNAL RELATIONS
525 JUNCTION RD., STE. 6000
MADISON, WI 53717
Peter.healy@tdsmetro.com

Michael Lannon
ILLINOIS COMMERCE COMMISSION
160 S. LASALLE, SUITE C-800
CHICAGO, IL 60601
Mlannon@icc.state.il.us

Dan Leary
SENIOR MANAGER OF
GOVERNMENTAL AFFAIRS
VOICESTREAM WIRELESS CORP.
8550 W. BRYN MAWR AVE., FIRST FL.
CHICAGO, ILLINOIS 60631
Dan.leary@voicestream.com

Brett D. Leopold
SPRINT
6450 SPRINT PARKWAY
KSOPHN0212-2A461
OVERLAND PARK, KANSAS 66251
brett.leopold@mail.sprint.com

Theodore A. Livingston
Demetrios G. Metropoulos
ATTY. FOR ILLINOIS BELL
TELEPHONE COMPANY
MAYER, BROWN & PLATT
190 S. LASALLE ST.
CHICAGO, ILLINOIS 60603
Tlivingston@mayerbrown.com
Demetro@mayerbrown.com

Owen E. MacBride
ATTY. FOR INTERVENORS
SCHIFF HARDIN & WAITE
6600 SEARS TOWER
CHICAGO, IL 60606
omacbride@schiffhardin.com

Nancy J. Hertel
ILLINOIS BELL TELEPHONE
COMPANY
FLOOR 25D
225 W. RANDOLPH ST.
CHICAGO, IL 60606
Nancy.j.hertel@ameritech.com

Henry T. Kelly
ATTY. FOR ILLINOIS RURAL
COMPETITIVE ALLIANCE
O'KEEFE, ASHENDEN, LYONS
& WARD
30 S. LASALLE ST., STE. 4100
CHICAGO, IL 60602
Henrykelly@okeefe-law.com

Marianne McAllister
ALLEGIANCE TELECOM, INC.
9201 N. CENTRAL EXPRESSWAY
DALLAS, TX 75231
marianne.mcallister@allegiancetelecom.com

M. Gavin McCarty
VICE PRESIDENT & GENERAL
COUNSEL
GLOBALCOM, INC
333 W. WACKER DR., STE. 1500
CHICAGO, IL 60606
Gmccarty@global-com.com

Stephen J. Moore
ATTY. FOR XO ILLINOIS, INC.
ROWLAND & MOORE
77 W. WACKER DR., STE. 4600
CHICAGO, IL 60601
Steve@telecomreg.com

Dennis K. Muncy
ATTY. FOR IITA
MEYER CAPEL, A PROFESSIONAL
CORPORATION
306 W. CHURCH ST.
PO BOX 6750
CHAMPAIGN, IL 61826-6750
dmuncy@meyercapel.com

Joseph D. Murphy
ATTY. FOR IITA
MEYER CAPEL, A PROFESSIONAL
CORPORATION
306 W. CHURCH ST., PO BOX 6750
CHAMPAIGN, IL 61826-6750
jmurphy@meyercapel.com

Nora A. Naughton
OFFICE OF GENERAL COUNSEL
ILLINOIS COMMERCE COMMISSION
160 N. LASALLE ST., STE. C-800
CHICAGO, IL 60601
nnaughto@icc.state.il.us

Carol P. Pomponio
XO ILLINIOS, INC.
CONCOURSE LEVEL
303 E. WACKER
CHICAGO, IL 60601
Carol.pomponio@xo.com

Morton J. Posner
REGULATORY COUNSEL
ALLEGIANCE TELECOM OF ILLINOIS,
INC.
1150 CONNECTICUT AVE., NW,
STE. 205
WASHINGTON, DC 20036
morton.posner@allegiancetelecom.com

John E. Rooney
ATTY. FOR VERIZON
NORTH/SOUTH INC.
SONNENSCHN NATH & ROSENTHAL
8000 SEARS TOWER
CHICAGO, IL 60606
jrooney@sonnenschchein.com

Thomas Rowland
ATTY. FOR XO ILLINOIS, INC.
ROWLAND & MOORE
77 W. WACKER, STE. 4600
CHICAGO, IL 60601
Tom@telecomreg.com

David O. Rudd
DIRECTOR, STATE GOVERNMENT
RELATIONS
GALLATIN RIVER
COMMUNICATIONS L.L.C.
625 S. SECOND ST., STE. 103-D
SPRINGFIELD, IL 62704
dorudd@aol.com

Kevin Saville
CITIZENS COMMUNICATIONS
COMPANY
2378 WILSHIRE BLVD.
MOUND, MN 55364
Ksaville@czn.com

Kenneth A. Schiffman
SPRINT COMMUNICATIONS
COMPANY L.P.
8140 WARD PKWY., 5E
KANSAS CITY, MO 64114
kenneth.schiffman@mail.sprint.com

Kristen M. Smoot
RCN TELECOM SERVICES OF
ILLINOIS, INC.
350 N. ORLEANS ST., STE. 600
CHICAGO, IL 60654
kristen.smoot@rcn.net

Darrell Townsley
MIDWEST REGION PUBLIC POLICY
WORLDCOM, INC.
205 N. MICHIGAN AVE., 11TH FLOOR
CHICAGO, IL 60601
Darrell.Townsley@wcom.com

Douglas W. Trabaris
222 W. ADAMS ST., STE. 1500
CHICAGO, IL 60606
Dtrabaris@att.com

Lester Tsuyuki
MANAGER OF
TELECOMMUNICATIONS
PRIMECO PERSONAL
COMMUNICATIONS
ONE PIERCE PLACE, STE. 1100
ITASCA, IL 60143
Ltsuyuki@primeco.com

A. Randall Vogelzang
VERIZON SERVICES GROUP
600 HIDDEN RIDGE
IRVING, TX 75038
randy.vogelzang@verizon.com

John F. Ward Jr.
ATTY. FOR ILLINOIS RURAL
COMPETITIVE ALLIANCE
O'KEEFE, ASHENDEN, LYONS
& WARD
30 N. LASALLE ST., STE. 4100
CHICAGO, IL 60602
Jfwardjr@oalw.com

Nancy Wells
AT&T COMMUNICATIONS OF
ILLINOIS
620 S. 5th St.
SPRINGFIELD, IL 62703
njwells@att.com

David Woodsmall
VICE PRESIDENT – LEGAL &
REGULATORY
MPOWER COMMUNICATIONS
CENTRAL CORP.
175 SULLY'S TRAIL, STE 300
PITTSFORD, NY 14534
Dwoodsmall@mpowercom.com

Paul J. Rebey
FOCAL COMMUNICATIONS
CORPORATION
200 N. LASALLE, SUITE 800
CHICAGO, IL 60601
prebey@focal.com